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DOCKET NO. P05748
SERIAL NO. 10/728,065
PATENTREMARKS

Claims 1-20 are pending in the application.

Claims 1-20 have been rejected.

Claims 1-20 remain pending in this application.

Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTION UNDER 35 U.S.C. §102

Claims 1-2, 4-7, 9-10, 12-16 and 18-20 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2003/1075037 to *Kimmitt, et al.*, hereinafter "*Kimmitt*". This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. §102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP §2131, p. 2100-67 (8th ed., rev. 5, August 2006) (citing *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. *Id.* (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Kimmitt fails to teach or disclose "a monitor diode positioned to receive at least a portion of the emitted light, the monitor diode having a *bandwidth only partially overlapping a lower end of a data transmission spectrum for the data rate*", as currently required by Claim 1 and its dependents Claims 2 and 4-7. (emphasis added).

DOCKET NO. P05748
SERIAL NO. 10/728,065
PATENT

In fact, at the very most, *Kimmitt* teaches *superimposing* a low frequency signal on normal high frequency data. Although photo detector 58 then needs to sense the low frequency signal, the bandwidth of photo detector 58 must still be sufficient to cover the entire desired signal (i.e., a 3 kHz tone). (*Kimmitt*, paragraphs [0009], [0033] and [0036]). Contrary to the Examiner's apparent suggestion that photo detector 58 is somehow analogous to the "monitor diode" required by Claim 1, *Kimmitt* clearly fails to teach or disclose any monitor diode having a *bandwidth only partially overlapping a lower end of a data transmission spectrum for the data rate*, as required by Claim 1 (and its dependents Claims 2 and 4-7). (*Id.* at paragraph [0040]).

In addition, *Kimmitt* fails to teach or disclose "a controller capable of *determining an average output power of the light source based on an output signal of the monitor diode*, comparing the average output power to a target value, and adjusting the variable output power of the light source", as currently required by Claim 1 and its dependents Claims 2 and 4-7. (emphasis added). At most, *Kimmitt* teaches that the symmetry of the modulator transfer function and the data waveform produce a null in the amplitude modulation on the optical output power when the bias point is at the quadrature point. (*Id.* at paragraph [0030]). Furthermore, *Kimmitt* teaches that the modulator controller 42 monitors the output optical power via the optical feedback signal 39 and maintains a desired value of the data bias signal for the Data Modulator (DM) 38. (*Id.* at paragraph [0038]).

Although the Examiner appears to suggest that *Kimmitt* teaches maintaining a "quadrature point" throughout, there is, however, no teaching or disclosure within *Kimmitt* of a controller capable of determining an average output power of the light source *based on an output signal of the monitor*

DOCKET NO. P05748
SERIAL NO. 10/728,065
PATENT

diode, comparing the average output power to a target value, and *adjusting the variable output power of the light source*, as required by Claim 1 (and its dependents Claims 2 and 4-7).

Similar arguments hold true for independent Claims 9 and 15 (and their respective dependents 10, 12-16 and 18-20). Accordingly, the Applicant respectfully requests the Examiner to withdraw the §102 rejection with respect to these claims.

II. CLAIM REJECTION UNDER 35 U.S.C. §103

Claims 3, 11 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimmit*. The Applicant respectfully traverses the rejection. In addition, Claims 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimmit* in view of U.S. Patent No. 7,065,303 to *Kerem*, hereinafter "*Kerem*". The Applicant respectfully traverses the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP §2142, p. 2100-125 (8th ed. rev. 5, August 2006). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable

DOCKET NO. P05748
SERIAL NO. 10/728,065
PATENT

expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Id.

Claims 3, 11 and 17 depend from allowable Claims 1, 9 and 15, respectively. Claims 3, 11 and 17 are therefore also allowable for the reasons shown above. Similarly, Claim 8 depends from Claim 1 and is therefore also allowable for the reasons shown above.

In addition, *Kimmitt*, either alone or in any combination with *Kerem*, fails to teach or disclose, for example, a monitor diode having a *bandwidth only partially overlapping a lower end of a data transmission spectrum for the data rate*, as required by Claim 1 and ultimately by Claim 3.

Moreover, there is no suggestion or motivation within either reference to prompt one of ordinary skill to selectively combine discrete elements from each and then seek out still others as required by Claim 1 and ultimately by Claim 3. Similar arguments exist for Claim 8, 11 and 17.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the §103 rejection with respect to these claims.

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MAY 25 2007

DOCKET NO. P05748
SERIAL NO. 10/728,065
PATENT

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at wmunck@munckbutrus.com.


The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS P.C.

Date:

May 25, 2007



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